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SENATE BILL 267

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph A. Fidel

AN ACT

**RELATING TO REAL ESTATE LICENSURE; CHANGING DEFINED TERMS,
INCLUDING THOSE FOR REAL ESTATE BROKERS AND SALESPERSONS;
PROVIDING FOR ADDITIONAL COMMISSION POWERS, DISCLOSURE OF
LICENSEE DUTIES AND CONSENT FOR SERVICE OF PROCESS; REVISING
PROVISIONS FOR MAXIMUM ANNUAL PREMIUM FOR LIABILITY INSURANCE
AND FOR REFUND OF LICENSE FEES; REVISING REQUIREMENTS FOR
CONTINUING EDUCATION AND QUALIFICATIONS FOR LICENSEES; CREATING
THE REAL ESTATE EDUCATION AND TRAINING FUND; MAKING AN
APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 61-29-1 NMSA 1978 (being Laws 1959,
Chapter 226, Section 1, as amended) is amended to read:**

**"61-29-1. PROHIBITION.--It is unlawful for a person to
engage in the business, act in the capacity of, advertise or**

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1 display in any manner or otherwise assume to engage in the
2 business of, or act as [~~a broker or real estate salesperson~~] an
3 associate broker or a qualifying broker within this state
4 without a license issued by the commission. A person who
5 engages in the business or acts in the capacity of [~~a broker or~~
6 ~~real estate salesperson~~] an associate broker or a qualifying
7 broker in this state, except as otherwise provided in Section
8 61-29-2 NMSA 1978, with or without a New Mexico license, has
9 thereby submitted to the jurisdiction of the state and to the
10 administrative jurisdiction of the commission and is subject to
11 all penalties and remedies available for a violation of any
12 provision of Chapter 61, Article 29 NMSA 1978. "

13 Section 2. Section 61-29-2 NMSA 1978 (being Laws 1999,
14 Chapter 127, Section 1, as amended) is amended to read:

15 "61-29-2. DEFINITIONS AND EXCEPTIONS. --

16 A. As used in Chapter 61, Article 29 NMSA 1978:

17 (1) "agency relationship" [~~or "brokerage~~
18 ~~relationship" means the legal or contractual relationship~~
19 ~~between a person and a brokerage in a real estate transaction~~
20 ~~subject to the jurisdiction of the commission~~] means the
21 fiduciary relationship created solely by an express written
22 agency agreement between a person and a brokerage, authorizing
23 the brokerage to act as an agent for the person according to
24 the scope of authority granted in that express written
25 agreement for real estate services subject to the jurisdiction

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1 of the commission;

2 (2) "agent" means the brokerage authorized,
3 solely by means of an express written agreement, to act as a
4 fiduciary for a person and to provide real estate services that
5 are subject to the jurisdiction of the commission; in the case
6 of an associate broker, "agent" means the person who has been
7 authorized to act by that associate broker's qualifying broker;

8 (3) "associate broker" means a person who, for
9 compensation or other valuable consideration, is associated
10 with or engaged under contract by a qualifying broker to
11 participate in an activity described in Paragraph (4) of this
12 subsection or to carry on the qualifying broker's business as a
13 whole or partial vocation;

14 [~~(2)~~] (4) "broker" or "qualifying broker"
15 means a person who for compensation or other consideration from
16 another:

17 (a) lists, sells or offers to sell real
18 estate; buys or offers to buy real estate; or negotiates the
19 purchase, sale or exchange of real estate or options on real
20 estate;

21 (b) leases, rents or auctions or offers
22 to lease, rent or auction real estate;

23 (c) advertises or holds himself out as
24 being engaged in the business of buying, selling, exchanging,
25 renting, leasing, auctioning or dealing with options on real

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1 estate for others as a whole or partial vocation; or

2 (d) engages in the business of charging
3 an advance fee or contracting for collection of a fee in
4 connection with a contract under which [~~he~~] the broker or
5 qualifying broker undertakes primarily to promote the sale of
6 real estate through its listing in a publication issued
7 primarily for that purpose or for the purpose of referral of
8 information concerning real estate to brokers, qualifying
9 brokers or associate brokers;

10 [~~(3)~~] (5) "brokerage" means a licensed
11 qualifying broker and the licensed real estate business
12 represented by the qualifying broker and its affiliated
13 licensees;

14 (6) "brokerage relationship" means the legal
15 or contractual relationship between a person and a brokerage in
16 a real estate transaction subject to the jurisdiction of the
17 commission;

18 [~~(4)~~] (7) "client" means a buyer, seller,
19 landlord or tenant who has entered into an express written
20 agreement with a brokerage for real estate services subject to
21 the jurisdiction of the commission;

22 [~~(5)~~] (8) "commission" means the New Mexico
23 real estate commission;

24 [~~(6)~~] (9) "customer" means a buyer, seller,
25 landlord or tenant who uses real estate services without

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1 entering into an express written agreement with a brokerage
2 subject to the jurisdiction of the commission;

3 [~~(7)~~] (10) "license" means a [~~real estate~~]
4 qualifying broker's license or [a real estate salesperson's] an
5 associate broker's license issued by the commission;

6 [~~(8)~~] (11) "licensee" means a person holding a
7 valid [~~real estate~~] qualifying broker's license or an associate
8 broker's license subject to the jurisdiction of the commission;

9 [~~(9)~~] (12) "real estate" means land,
10 improvements, leaseholds and other interests in real property
11 that are less than a fee simple ownership interest, whether
12 tangible or intangible; and

13 [~~(10)~~] (13) "real estate salesperson" means a
14 person who, for compensation or other valuable consideration,
15 is associated with or engaged under contract by a broker to
16 participate in an activity described in [~~Subparagraphs (a)~~
17 ~~through (d) of~~] Paragraph [~~(9)~~] (4) of this subsection or to
18 carry on the broker's business as a whole or partial vocation;
19 and

20 (14) "transaction broker" means a qualifying
21 broker, associate broker or brokerage that provides real estate
22 services without entering into an agency relationship.

23 B. A single act of a person in performing or
24 attempting to perform an activity described in [~~Subparagraphs~~
25 ~~(a) through (d) of~~] Paragraph [~~(2)~~] (4) of Subsection A of this

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1 section makes the person a qualifying broker. A single act of
2 a person in performing or attempting to perform an activity
3 described in Paragraph [~~(10)~~] (3) of Subsection A of this
4 section makes the person [~~a real estate salesperson~~] an
5 associate broker.

6 C. The provisions of Chapter 61, Article 29 NMSA
7 1978 do not apply to:

8 (1) a person who as owner or lessor performs
9 any of the activities included in this section with reference
10 to property owned or leased by [~~him~~] the person, the employees
11 of the owner or lessor or the employees of a qualifying broker
12 acting on behalf of the owner or lessor, with respect to the
13 property owned or leased, if the acts are performed in the
14 regular course of or incident to the management of the property
15 and the investments, except when the sale or offering for sale
16 or the lease or offering for lease of the property constitutes
17 a subdivision containing one hundred or more parcels;

18 (2) isolated or sporadic transactions not
19 exceeding two transactions annually in which a person acts as
20 attorney-in-fact under a duly executed power of attorney
21 delivered by an owner authorizing the person to finally
22 consummate and to perform under any contract the sale, leasing
23 or exchange of real estate on behalf of the owner; and the
24 owner or attorney-in-fact has not used a power of attorney for
25 the purpose of evading the provisions of Chapter 61, Article 29

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1 NMSA 1978;

2 (3) transactions in which a person acts as
3 attorney-in-fact under a duly executed power of attorney
4 delivered by an owner related to the attorney-in-fact within
5 the fourth degree of consanguinity or closer, authorizing the
6 person to finally consummate and to perform under any contract
7 for the sale, leasing or exchange of real estate on behalf of
8 the owner;

9 (4) the services rendered by an attorney at
10 law in the performance of ~~his~~ the attorney's duties as an
11 attorney at law;

12 (5) a person acting in the capacity of a
13 receiver, trustee in bankruptcy, administrator or executor, a
14 person selling real estate pursuant to an order of any court or
15 a trustee acting under a trust agreement, deed of trust or will
16 or the regular salaried employee of a trustee;

17 (6) the activities of a salaried employee of a
18 governmental agency acting within the scope of ~~his~~
19 employment; or

20 (7) persons who deal exclusively in mineral
21 leases or the sale or purchase of mineral rights or royalties
22 in any case in which the fee to the land or the surface rights
23 are in no way involved in the transaction. "

24 Section 3. Section 61-29-4 NMSA 1978 (being Laws 1959,
25 Chapter 226, Section 3, as amended by Laws 2003, Chapter 22,

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1 Section 1 and by Laws 2003, Chapter 408, Section 30) is amended
2 to read:

3 "61-29-4. CREATION OF COMMISSION-- POWERS AND DUTIES. --

4 There is created the "New Mexico real estate commission". The
5 commission shall be appointed by the governor and shall consist
6 of five members who shall have been residents of the state for
7 three consecutive years immediately prior to their appointment,
8 four of whom shall have been [~~real-estate~~] associate brokers or
9 qualifying brokers licensed in New Mexico and one of whom shall
10 be a member of the public who has never been licensed as [a
11 ~~real-estate broker or salesperson~~] an associate broker or a
12 qualifying broker; provided that not more than one member shall
13 be from any one county within the state. The members of the
14 commission shall serve for a period of five years or until
15 their successors are appointed and qualified. [~~Members to fill~~
16 ~~vacancies shall be appointed for an unexpired term.~~] The
17 governor may remove a member for cause. In the event of
18 vacancies, the governor shall appoint members to complete
19 unexpired terms. The commission shall possess all the powers
20 and perform all the duties prescribed by Chapter 61, Article 29
21 NMSA 1978 and as otherwise provided by law, and it is expressly
22 vested with power and authority to make and enforce rules [~~and~~
23 ~~regulations~~] to carry out the provisions of that article.
24 Prior to a final action on a proposed change or amendment to
25 the rules [~~and regulations~~] of the commission, the commission

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1 may publish notice of the proposed action in its official
2 publication, distribute the publication to each active licensee
3 and give the time and place for a public hearing on the
4 proposed changes. The hearing shall be held at least thirty
5 days prior to a proposed final action. Changes or amendments
6 to the rules shall be filed in accordance with the procedures
7 of the State Rules Act and shall become effective thirty days
8 after notification to all active licensees of the filing of the
9 changes or amendments. "

10 Section 4. Section 61-29-4.1 NMSA 1978 (being Laws 1985,
11 Chapter 89, Section 1, as amended) is amended to read:

12 "61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING
13 EDUCATION PROGRAMS--MINIMUM REQUIREMENTS. -- [~~In addition to the~~
14 ~~powers and duties granted the commission under the provisions~~
15 ~~of Section 61-29-4 NMSA 1978]~~ The commission shall adopt
16 [~~regulations~~] rules providing for continuing [~~educational~~
17 ~~programs that offer~~] education courses in selling, leasing or
18 managing residential, commercial and industrial property as
19 well as courses [~~reviewing~~] in basic real estate law and
20 practice, and other courses prescribed by the commission. [~~The~~
21 ~~regulations shall require that every licensee except licensees~~
22 ~~who are sixty-five years of age or older and who have a minimum~~
23 ~~of twenty years' continuously licensed experience in the~~
24 ~~selling, leasing or managing of real property, as a condition~~
25 ~~of his license renewal, shall successfully complete thirty~~

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1 ~~classroom hours of instruction every three years in courses~~
2 ~~approved by the commission.]~~ The rules shall require that every
3 licensee, except licensees who were exempted from the
4 continuing education requirement on the effective date of this
5 2005 act by virtue of being sixty-five years of age or older
6 and having a minimum of twenty years' continuous experience as
7 a real estate licensee, as a condition of license renewal,
8 successfully complete a minimum of thirty classroom hours of
9 instruction in continuing education courses prescribed by the
10 commission. The ~~[regulations shall]~~ rules may prescribe areas
11 of specialty or expertise and may require that ~~[a certain]~~ part
12 of the ~~[thirty hours of]~~ classroom instruction be devoted to
13 courses in the area of a licensee's specialty or expertise. "

14 Section 5. Section 61-29-4.2 NMSA 1978 (being Laws 2001,
15 Chapter 216, Section 1) is amended to read:

16 "61-29-4.2. ADDITIONAL POWERS OF THE COMMISSION--
17 PROFESSIONAL LIABILITY INSURANCE ~~[MAXIMUM COST OF PREMIUM]~~--
18 MINIMUM COVERAGE. --

19 A. In addition to the powers and duties granted to
20 the commission pursuant to the provisions of Sections 61-29-4
21 and 61-29-4.1 NMSA 1978, the commission may adopt rules that
22 require professional liability insurance coverage and may
23 establish the minimum terms and conditions of coverage,
24 including limits of coverage and permitted exceptions. If
25 adopted by the commission, the rules shall require every

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1 applicant for an active license and licensee who applies for
2 renewal of an active license to provide the commission with
3 satisfactory evidence that he has professional liability
4 insurance coverage that meets the minimum terms and conditions
5 required by commission rule.

6 B. The commission is authorized to solicit sealed,
7 competitive proposals from insurance carriers to provide a
8 group professional liability insurance policy that complies
9 with the terms and conditions established by commission rule.
10 The commission may approve one or more policies that comply
11 with the commission rules; provided that the maximum annual
12 premium shall not exceed [~~one hundred fifty dollars (\$150)~~] two
13 hundred dollars (\$200) for a licensee, that the minimum
14 coverage shall not be less than one hundred thousand dollars
15 (\$100,000) for an individual claim and not less than a five
16 hundred thousand dollar (\$500,000) aggregate limit per policy
17 and that the deductible shall not be greater than one thousand
18 dollars (\$1,000).

19 C. Rules adopted by the commission shall permit an
20 active licensee to satisfy any requirement for professional
21 liability insurance coverage by purchasing an individual
22 policy.

23 D. Rules adopted by the commission shall provide
24 that there shall not be a requirement for a licensee to have
25 professional liability insurance coverage during a period when

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1 a group policy, as provided in Subsection B of this section, is
2 not in effect. "

3 Section 6. A new section of Chapter 61, Article 29 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] ADDITIONAL POWERS OF COMMISSION--CRIMINAL
6 BACKGROUND CHECKS. --The commission may require license
7 applicants, as a condition of licensure, to submit to criminal
8 background checks. "

9 Section 7. Section 61-29-5 NMSA 1978 (being Laws 1959,
10 Chapter 226, Section 4, as amended) is amended to read:

11 "61-29-5. ORGANIZATION OF COMMISSION. --The commission
12 shall organize by electing a president, vice president and
13 secretary from its members. A majority of the commission shall
14 constitute a quorum and may exercise all powers and duties
15 devolving upon it and do all things necessary to carry into
16 effect the provisions of Chapter 61, Article 29 NMSA 1978. The
17 secretary of the commission shall keep a record of its
18 proceedings; a register of persons licensed as [~~real-estate~~
19 ~~brokers and as real-estate salespersons~~] associate brokers and
20 qualifying brokers, showing the name and place of business of
21 each and the date and number of [~~his or her certificate~~] each
22 person's license; and a record of all licenses [~~or~~
23 ~~certificates~~] issued, [~~refused, removed~~] denied, suspended or
24 revoked. This record shall be open to public inspection at all
25 reasonable times. "

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1 Section 8. Section 61-29-6 NMSA 1978 (being Laws 1959,
2 Chapter 226, Section 5) is amended to read:

3 "61-29-6. MEETING OF THE COMMISSION. --The commission
4 shall meet at least once each quarter-year at such time and
5 place as may be designated by the commission president
6 [~~thereof~~], and special meetings may be held upon five [~~days~~
7 days' written notice to each of the commission members by the
8 [~~president of the~~] commission president. "

9 Section 9. Section 61-29-8 NMSA 1978 (being Laws 1959,
10 Chapter 226, Section 7, as amended) is amended to read:

11 "61-29-8. LICENSE FEES-- DISPOSITION. --

12 A. The following fees shall be established and
13 charged by the commission and paid into the real estate
14 commission fund:

15 (1) for each examination, a fee not to exceed
16 ninety-five dollars (\$95.00);

17 (2) for each qualifying broker's license
18 issued, a fee not to exceed two hundred seventy dollars (\$270)
19 and for each renewal thereof, a fee not to exceed two hundred
20 seventy dollars (\$270);

21 (3) for each [~~real estate salesperson's~~]
22 associate broker's license issued, a fee not to exceed two
23 hundred seventy dollars (\$270) and for each renewal thereof, a
24 fee not to exceed two hundred seventy dollars (\$270);

25 (4) subject to the provisions of Paragraph

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1 (10) of this subsection, for each change of place of business
2 or change of employer or contractual associate, a transfer fee
3 not to exceed twenty dollars (\$20.00);

4 (5) for each duplicate license, where the
5 license is lost or destroyed and affidavit is made thereof, a
6 fee not to exceed twenty dollars (\$20.00);

7 (6) for each license history, a fee not to
8 exceed twenty-five dollars (\$25.00);

9 (7) for copying of documents by the
10 commission, a fee not to exceed one dollar (\$1.00) per copy;

11 (8) for each license law and rules [~~and~~
12 ~~regulations~~] booklet, a fee not to exceed ten dollars (\$10.00)
13 per booklet;

14 (9) for each hard copy or electronic list of
15 licensed [~~real-estate~~] associate brokers and [~~salespersons~~]
16 qualifying brokers, a fee not to exceed twenty dollars
17 (\$20.00);

18 (10) for each license reissued for [~~a real~~
19 ~~estate salesperson~~] an associate broker because of change of
20 address of the qualifying broker's office, death of the
21 [~~licensed~~] qualifying broker when a successor [~~licensed~~]
22 qualifying broker is replacing the decedent and the
23 [~~salesperson~~] associate broker remains in the office or because
24 of a change of name of the office or the entity of the
25 [~~licensed~~] qualifying broker, a fee in an amount not to exceed

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1 twenty dollars (\$20.00) to be paid by the ~~[licensed]~~ qualifying
2 broker or successor qualifying broker as the case may be; but
3 if there are eleven or more affected ~~[salespersons]~~ associate
4 brokers in the ~~[licensed]~~ qualifying broker's office, the total
5 fee paid to effect reissuance of all of those licenses shall
6 not exceed two hundred dollars (\$200);

7 (11) for each application to the commission to
8 become an approved sponsor of pre-licensing and continuing
9 education courses, a fee not to exceed five hundred dollars
10 (\$500) and for each renewal thereof, a fee not to exceed five
11 hundred dollars (\$500);

12 (12) for each application to the commission to
13 become an approved instructor of pre-licensing and continuing
14 education courses, a fee not to exceed seventy dollars (\$70.00)
15 per course; and

16 (13) for each application to the commission to
17 renew certification as a commission-approved instructor, a fee
18 not to exceed one hundred dollars (\$100).

19 B. All fees set by the commission shall be set by
20 rule and only after all requirements have been met as
21 prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or
22 amendments to the rules shall be filed in accordance with ~~[the~~
23 ~~provisions of]~~ the State Rules Act.

24 C. The commission shall deposit all money received
25 by it from fees in accordance with the provisions of Chapter

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1 61, Article 29 NMSA 1978 with the state treasurer, who shall
2 keep that money in a separate fund to be known as the "real
3 estate commission fund", and money so deposited in that fund is
4 appropriated to the commission for the purpose of carrying out
5 the provisions of [~~Chapter 61, Article 29~~] Section 61-29-4 NMSA
6 1978 or to maintain the real estate recovery fund as required
7 by the Real Estate Recovery Fund Act and shall be paid out of
8 the fund upon the vouchers of the executive secretary of the
9 commission or his designee; provided that the total fees and
10 charges collected and paid into the state treasury and any
11 money so deposited shall be expended only for the purposes
12 authorized by Chapter 61, Article 29 NMSA 1978.

13 [~~D. The commission shall by rule provide for a
14 proportionate refund of the license issuance fee or the license
15 renewal fee if the license is issued or renewed for a period of
16 three years pursuant to Section 61-29-11 NMSA 1978 and is
17 terminated with more than one year remaining.~~]"

18 Section 10. Section 61-29-9 NMSA 1978 (being Laws 1959,
19 Chapter 226, Section 8, as amended by Laws 2003, Chapter 22,
20 Section 4 and by Laws 2003, Chapter 329, Section 1) is amended
21 to read:

22 "61-29-9. QUALIFICATIONS FOR LICENSE. --

23 A. Licenses shall be granted only to persons who
24 meet the requirements for licensure prescribed by law and are
25 deemed by the commission to be of good repute and competent to

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1 transact the business of a [~~real estate broker or salesperson~~]
2 qualifying broker or an associate broker in a manner that
3 safeguards the interests of the public.

4 B. An applicant for a qualifying broker's license
5 or an associate broker's license shall be a legal resident of
6 the United States and have reached the age of majority. Each
7 applicant for a qualifying broker's license or an associate
8 broker's license shall have passed the real estate examination
9 approved by the commission and shall:

10 [~~(1) have performed actively as a real estate~~
11 ~~salesperson for at least twenty-four months out of the~~
12 ~~preceding thirty-six months immediately prior to filing~~
13 ~~application and furnish the commission a certificate that he~~
14 ~~has completed successfully a broker basics course approved by~~
15 ~~the commission;~~

16 (2)] (1) furnish the commission with a
17 certificate that [~~he~~] the applicant has completed successfully
18 [~~one hundred eighty~~] one hundred twenty classroom hours of
19 instruction in basic real estate courses approved by the
20 commission, thirty hours of which shall have been a broker
21 basics course;

22 [~~(3)~~] (2) furnish the commission with a
23 certificate that [~~he~~] the applicant is a duly licensed real
24 estate broker in good standing in another state; [~~providing he~~]
25 provided that the applicant has successfully completed

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1 [successfully] ninety classroom hours of instruction in basic
2 real estate courses approved by the commission, thirty hours of
3 which shall have been a broker basics course; or

4 [~~(4)~~] (3) furnish the commission with
5 satisfactory proof of [~~his~~] equivalent experience in an
6 activity closely related to or associated with real estate and
7 furnish the commission with a certificate that [~~he~~] the
8 applicant has completed successfully ninety classroom hours of
9 instruction in basic real estate courses approved by the
10 commission, thirty hours of which shall have been a broker
11 basics course. [~~or~~

12 ~~(5) an applicant for a qualifying broker's~~
13 ~~license shall have been actively engaged in the real estate~~
14 ~~business as an associate broker or salesperson for at least two~~
15 ~~years and furnish the commission a certificate that he has~~
16 ~~completed successfully a broker basics course approved by the~~
17 ~~commission.~~

18 ~~C. Each applicant for a real estate salesperson's~~
19 ~~license shall be a legal resident of the United States, have~~
20 ~~reached the age of majority, have passed the real estate~~
21 ~~examination approved by the commission and furnish the~~
22 ~~commission a certificate that he has completed successfully~~
23 ~~sixty classroom hours of instruction in basic real estate~~
24 ~~courses approved by the commission.]~~

25 C. An applicant for a qualifying broker's license

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1 shall have been actively engaged in the real estate business as
2 an associate broker or real estate salesperson for at least two
3 of the last five years immediately preceding application for a
4 qualifying broker's license and furnish the commission proof
5 that the applicant has completed successfully a broker basics
6 course approved by the commission.

7 D. A licensee holding a current real estate
8 salesperson's license on the effective date of this 2005 act
9 shall automatically qualify for an associate broker's license
10 without any additional requirements. However, to be eligible
11 to apply for a qualifying broker's license, a real estate
12 salesperson obtaining an associate broker's license pursuant to
13 this subsection shall, in addition to meeting all other
14 requirements for a qualifying broker's license, pass a real
15 estate broker's examination approved by the commission.

16 ~~[D-]~~ E. The commission shall require the
17 information it deems necessary from every applicant to
18 determine [his] that applicant's honesty, trustworthiness and
19 competency. Corporations, partnerships or associations may
20 hold a qualifying broker's license issued in the name of the
21 corporation, partnership or association; provided that at least
22 one member of the partnership or association or one officer or
23 employee of a corporation who actively engages in the real
24 estate business first secures a qualifying broker's license.
25 The license shall be issued in the name of the corporation,

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1 partnership or association, naming the partner, associate,
2 officer or employee as qualifying broker for the corporation,
3 partnership or association. "

4 Section 11. Section 61-29-10 NMSA 1978 (being Laws 1959,
5 Chapter 226, Section 9, as amended) is amended to read:

6 "61-29-10. APPLICATION FOR LICENSE AND EXAMINATION. --

7 A. All applications for licenses to act as [~~real~~
8 ~~estate brokers and real estate salespersons~~] qualifying brokers
9 and associate brokers shall be made in writing to the
10 commission and shall contain such data and information as may
11 be required upon a form to be prescribed and furnished by the
12 commission. The application shall be accompanied by:

13 (1) the recommendation of two reputable
14 citizens who own real estate in the county in which the
15 applicant resides, which recommendation shall certify that the
16 applicant is of good moral character, honest and trustworthy;
17 and

18 (2) the triennial license fee prescribed by
19 the commission.

20 B. In addition to proof of honesty, trustworthiness
21 and good reputation, an applicant shall pass [~~satisfactorily~~] a
22 written examination approved by the commission. The
23 examination shall be given at the time and places within the
24 state as the commission shall prescribe; however, the
25 examination shall be given not less than two times during each

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1 calendar year. The examination shall include business ethics,
2 writing, composition, arithmetic, elementary principles of land
3 economics and appraisals, a general knowledge of the statutes
4 of this state relating to deeds, mortgages, contracts of sale,
5 agency and brokerage and the provisions of Chapter 61, Article
6 29 NMSA 1978.

7 C. ~~No~~ An applicant is not permitted to engage in
8 the real estate business until ~~he~~ the applicant has
9 ~~satisfactorily~~ passed the approved examination, complied with
10 the other requirements of Chapter 61, Article 29 NMSA 1978, and
11 until a license has been issued to ~~him~~ the applicant.

12 D. Notice of passing or failing to pass the
13 examination shall be given ~~by the commission~~ to an applicant
14 not later than three weeks following the date of the
15 examination.

16 E. The commission may establish educational
17 programs and procure qualified personnel, facilities and
18 materials for the instruction of persons desiring to become
19 qualifying brokers or associate brokers ~~or salespersons~~ or
20 desiring to improve their proficiency as qualifying brokers or
21 associate brokers ~~or salespersons~~. The commission may
22 inspect and accredit educational programs and courses of study
23 and may establish standards of accreditation for educational
24 programs conducted in this state. The expenses incurred by the
25 commission in activities authorized pursuant to this subsection

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1 shall not exceed the total revenues received and accumulated by
2 the commission. "

3 Section 12. Section 61-29-10.2 NMSA 1978 (being Laws
4 1999, Chapter 127, Section 3, as amended) is amended to read:

5 "61-29-10.2. LICENSEE'S DUTIES--DISCLOSURE. --

6 A. [A] Prior to the time a licensee generates or
7 presents any written document that has the potential to become
8 an express written agreement, the licensee shall give to a
9 prospective buyer, seller, landlord or tenant [~~at the time when~~
10 ~~the parties enter into an express written agreement~~] a list of
11 the licensee's duties that are in accordance with requirements
12 established by the commission.

13 B. Licensees shall perform all duties that are
14 established for licensees by the commission. "

15 Section 13. Section 61-29-11 NMSA 1978 (being Laws 1959,
16 Chapter 226, Section 10, as amended) is amended to read:

17 "61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF
18 LICENSES. --

19 A. The commission shall issue to each qualified
20 applicant a license in the form and size prescribed by the
21 commission.

22 B. The license shall show the name and address of
23 the licensee. [~~A real estate salesperson's~~] An associate
24 broker's license shall show the name of the qualifying broker
25 by whom [~~he~~] the associate broker is engaged. [~~The license of~~

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1 ~~the real estate salesperson shall be delivered or mailed to the~~
2 ~~broker by whom the real estate salesperson is engaged and shall~~
3 ~~be kept in the custody and control of that broker.] The
4 commission shall deliver or mail the license of the associate
5 broker to the qualifying broker by whom the associate broker is
6 engaged, and the qualifying broker shall display the license at
7 the brokerage from which the associate broker will be
8 conducting real estate business on behalf of the brokerage.
9 The license of the associate broker shall remain in the custody
10 and control of the qualifying broker as long as the associate
11 broker is engaged by that qualifying broker.~~

12 C. Every license shall be renewed every three years
13 on or before the last day of the month following the licensee's
14 month of birth. Upon written request for renewal by the
15 licensee, the commission shall certify renewal of a license if
16 there is no reason or condition that might warrant the refusal
17 of the renewal of a license. The licensee shall provide proof
18 of compliance with continuing education requirements and pay
19 the renewal fee. If a licensee has not made application for
20 renewal of license, furnished proof of compliance with
21 continuing education requirements and paid the renewal fee by
22 the license renewal date, the license shall expire. The
23 commission may require a person whose license has expired to
24 apply for a license as if ~~he~~ the person had not been
25 previously licensed under Chapter 61, Article 29 NMSA 1978 and

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1 further require that ~~[he]~~ the person be reexamined. The
2 commission shall require a person whose license has expired to
3 pay when ~~[he]~~ the person applies for a license, in addition to
4 any other fee, a late fee. If during a period of one year from
5 the date the license expires the person or ~~[his]~~ the person's
6 spouse is either absent from this state on active duty military
7 service or the person is suffering from an illness or injury of
8 such severity that the person is physically or mentally
9 incapable of making application for a license, payment of the
10 late fee and reexamination shall not be required by the
11 commission if, within three months of the person's permanent
12 return to this state or sufficient recovery from illness or
13 injury to allow the person to make an application, the person
14 makes application to the commission for a license. A copy of
15 that person's or ~~[his]~~ that person's spouse's military orders
16 or a certificate from the applicant's physician shall accompany
17 the application. A person excused by reason of active duty
18 military service, illness or injury as provided for in this
19 subsection may make application for a license without
20 imposition of the late fee. All fees collected pursuant to
21 this subsection shall be disposed of in accordance with the
22 provisions of Section 61-29-8 NMSA 1978. The revocation of a
23 qualifying broker's license automatically suspends every ~~real~~
24 ~~estate salesperson's~~ associate broker's license granted to any
25 person by virtue of association with the qualifying broker

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1 whose license has been revoked, pending a change of qualifying
2 broker. Upon the naming of a new qualifying broker, the
3 suspended license shall be reactivated without charge if
4 granted during the three-year renewal cycle.

5 D. ~~[Each resident licensed]~~ A qualifying broker
6 shall ~~[maintain within this state a fixed office that conforms~~
7 ~~with local regulations]~~ conduct brokerage business under the
8 trade name and from the brokerage address registered with the
9 commission. Every ~~[office operated by a licensed broker]~~
10 brokerage shall have a ~~[licensed]~~ qualifying broker in charge
11 ~~[who is a natural person]~~. The license of the qualifying
12 broker and each ~~[real estate salesperson]~~ associate broker
13 associated with that qualifying broker shall be prominently
14 displayed in ~~[the]~~ each brokerage office. The address of the
15 office shall be designated in the qualifying broker's license,
16 and ~~[no]~~ a license issued shall not authorize the licensee to
17 transact real estate business at any other address. In case of
18 removal from the designated address, the licensee shall make
19 application to the commission before the removal or within ten
20 days thereafter, designating the new location of ~~[his]~~ the
21 licensee's office and paying the required fee, whereupon the
22 commission shall issue a license for the new location if the
23 new location complies with the terms of Chapter 61, Article 29
24 NMSA 1978. A ~~[licensed]~~ qualifying broker shall maintain a
25 sign ~~[on his]~~ at the brokerage office of such size and content

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1 as the commission prescribes. [~~In making application for a~~
2 ~~license or for a change of address, the licensee shall verify~~
3 ~~that his office conforms with local regulations.~~]

4 E. When [~~a real estate salesperson~~] an associate
5 broker is discharged or terminates [~~his~~] association or
6 employment with the qualifying broker with whom [~~he~~] the
7 associate broker is associated, [~~it is the duty of that~~] the
8 qualifying broker [~~to~~] shall deliver or mail [~~to the commission~~
9 ~~that real estate salesperson's~~] the associate broker's license
10 to the commission within forty-eight hours. The commission
11 shall hold the license on inactive status. It is unlawful for
12 [~~a real estate salesperson~~] an associate broker to perform any
13 of the acts authorized by Chapter 61, Article 29 NMSA 1978
14 either directly or indirectly under authority of an inactive
15 license after [~~his~~] the associate broker's association with a
16 qualifying broker has been terminated and [~~his~~] the associate
17 broker's license [~~as salesperson~~] has been returned to the
18 commission [~~as provided in that article~~] until the appropriate
19 fee has been paid and the license has been reissued and
20 reactivated by the commission. "

21 Section 14. Section 61-29-12 NMSA 1978 (being Laws 1959,
22 Chapter 226, Section 11, as amended) is amended to read:

23 "61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE
24 FOR CAUSES ENUMERATED. - -

25 A. The commission may refuse to issue a license or

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1 may suspend, [or] revoke, limit or condition a license if the
2 applicant or licensee has by false or fraudulent
3 representations obtained a license or, in performing or
4 attempting to perform any of the actions specified in Chapter
5 61, Article 29 NMSA 1978, an applicant or licensee has:

6 (1) made a substantial misrepresentation;

7 (2) pursued a continued and flagrant course of
8 misrepresentation; made false promises through agents,
9 salespersons, advertising or otherwise; or used any trade name
10 or insignia of membership in any real estate organization of
11 which the licensee is not a member;

12 (3) paid or received a rebate, profit,
13 compensation or commission to or from any unlicensed person,
14 except [his] the licensee's principal or other party to the
15 transaction, and then only with [his] that principal's written
16 consent;

17 (4) represented or attempted to represent a
18 qualifying broker other than a qualifying broker with whom [he]
19 the licensee is associated without the express knowledge and
20 consent of that qualifying broker;

21 (5) failed, within a reasonable time, to
22 account for or to remit any money coming into [his] the
23 licensee's possession that belongs to others, commingled funds
24 of others with [his] the licensee's own or failed to keep funds
25 of others in an escrow or trustee account or failed to furnish

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1 legible copies of all listing and sales contracts to all
2 parties executing them;

3 (6) been convicted in any court of competent
4 jurisdiction of a felony or any offense involving moral
5 turpitude;

6 (7) employed or compensated directly or
7 indirectly a person for performing any of the acts regulated by
8 Chapter 61, Article 29 NMSA 1978 who is not a licensed
9 qualifying broker or an associate broker [~~or licensed~~
10 ~~salesperson~~]; provided, however, that a [~~licensed~~] qualifying
11 broker may pay a commission to a [~~licensed~~] qualifying broker
12 of another state; provided further that the nonresident broker
13 shall not conduct in this state any of the negotiations for
14 which a fee, compensation or commission is paid except in
15 cooperation with a licensed qualifying broker of this state;

16 (8) failed, if a qualifying broker, to place
17 as soon after receipt as is practicably possible, after
18 securing signatures of all parties to the transaction, any
19 deposit money or other money received by [~~him~~] the qualifying
20 broker in a real estate transaction in a custodial, trust or
21 escrow account, maintained by [~~him~~] the qualifying broker in a
22 bank or savings and loan institution or title company
23 authorized to do business in this state, in which the funds
24 shall be kept until the transaction is consummated or otherwise
25 terminated, at which time a full accounting of the funds shall

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1 be made by the qualifying broker. Records relative to the
2 deposit, maintenance and withdrawal of the funds shall contain
3 information as may be prescribed by the rules of the
4 commission. Nothing in this paragraph prohibits a qualifying
5 broker from depositing nontrust funds in an amount not to
6 exceed the required minimum balance in each trust account so as
7 to meet the minimum balance requirements of the bank necessary
8 to maintain the account and avoid charges. The minimum balance
9 deposit shall not be considered commingling and shall not be
10 subject to levy, attachment or garnishment. This paragraph
11 does not prohibit a qualifying broker from depositing any
12 deposit money or other money received by ~~[him]~~ the qualifying
13 broker in a real estate transaction with another cooperating
14 broker who shall in turn comply with this paragraph;

15 (9) failed, if ~~[a salesperson]~~ an associate
16 broker, to place as soon after receipt as is practicably
17 possible in the custody of ~~[his]~~ the associate broker's
18 qualifying broker, after securing signatures of all parties to
19 the transaction, any deposit money or other money entrusted to
20 ~~[him]~~ the associate broker by any person dealing with ~~[him]~~ the
21 associate broker as the representative of ~~[his]~~ the qualifying
22 broker;

23 (10) violated a provision of Chapter 61,
24 Article 29 NMSA 1978 or a rule promulgated by the commission;

25 (11) committed an act, whether of the same or

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1 different character from that specified in this subsection,
2 that is related to dealings as a qualifying broker or an
3 associate broker [~~or real estate salesperson~~] and that
4 constitutes or demonstrates bad faith, incompetency,
5 untrustworthiness, impropriety, fraud, dishonesty, negligence
6 or any unlawful act; or

7 (12) been the subject of disciplinary action
8 as a licensee while licensed to practice real estate in another
9 jurisdiction, territory or possession of the United States or
10 another country.

11 B. An unlawful act or violation of Chapter 61,
12 Article 29 NMSA 1978 by [~~a real estate salesperson~~] an
13 associate broker, employee, partner or associate of a
14 [~~licensed~~] qualifying broker shall not be cause for the
15 revocation of a license of the qualifying broker unless it
16 appears to the satisfaction of the commission that the
17 qualifying broker had guilty knowledge of the unlawful act or
18 violation. "

19 Section 15. A new section of Chapter 61, Article 29 NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] NONRESIDENT LICENSEES-- CONSENT TO
22 SERVICE. --A nonresident associate broker or qualifying broker
23 shall file with the commission an irrevocable consent that
24 lawsuits and actions may be commenced against the nonresident
25 associate broker or qualifying broker in the proper court of

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1 any county of this state in which a cause of action may arise
2 or in which the plaintiff may reside, by service on the
3 commission of any process or pleadings authorized by the laws
4 of this state, the consent stipulating and agreeing that such
5 service of process or pleadings on the commission is as valid
6 and binding as if personal service had been made upon the
7 nonresident licensee in New Mexico. The instrument containing
8 the consent shall be acknowledged and, if executed on behalf of
9 a corporation or association, shall be accompanied by a
10 certified copy of the resolution of the proper officers or
11 managing board authorizing the executing officer to execute the
12 instrument. Service of process or pleadings shall be served in
13 duplicate upon the commission; one shall be filed in the office
14 of the commission and the other immediately forwarded by
15 certified mail to the main office of the nonresident licensee
16 against whom the process or pleadings are directed. "

17 Section 16. Section 61-29-16 NMSA 1978 (being Laws 1959,
18 Chapter 226, Section 15) is amended to read:

19 "61-29-16. SUIT BY QUALIFYING OR ASSOCIATE BROKER [~~OR~~
20 ~~SALESMAN~~]. -- No action for the collection of a commission or
21 compensation earned by any person as a [~~real estate broker or~~
22 ~~salesman~~] qualifying broker or an associate broker required to
23 be licensed under the provisions of [~~this act~~] Chapter 61,
24 Article 29 NMSA 1978 shall be maintained in the courts of the
25 state unless such person was a duly licensed qualifying broker

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1 or associate broker [~~or salesman~~] at the time the alleged cause
2 of action arose. In any event, suit against a member of the
3 public as distinguished from any person licensed under [~~this~~
4 ~~act~~] Chapter 61, Article 29 NMSA 1978 shall be maintained only
5 in the name of the qualifying broker. "

6 Section 17. Section 61-29-18 NMSA 1978 (being Laws 1959,
7 Chapter 226, Section 18) is amended to read:

8 "61-29-18. INTEPRETATION OF ACT. -- Nothing [~~in this act~~]
9 contained in Chapter 61, Article 29 NMSA 1978 shall affect the
10 power of cities and villages to tax, license and regulate [~~real~~
11 ~~estate~~] qualifying brokers or associate brokers. The
12 requirements hereof shall be in addition to the requirements of
13 an existing or future ordinance of any city or village so
14 taxing, licensing or regulating [~~real-estate~~] qualifying
15 brokers or associate brokers. "

16 Section 18. Section 61-29-23 NMSA 1978 (being Laws 1980,
17 Chapter 82, Section 4, as amended) is amended to read:

18 "61-29-23. JUDGMENT AGAINST QUALIFYING OR ASSOCIATE
19 BROKER [~~OR SALESPERSON~~] -- PETITION -- REQUIREMENTS -- RECOVERY
20 LIMITATIONS. --

21 A. When any aggrieved person claims a pecuniary
22 loss caused by a state-licensed [~~real-estate broker or~~
23 ~~salesperson~~] qualifying broker or associate broker based upon
24 fraud, knowing or willful misrepresentation or wrongful
25 conversion of funds entrusted to [~~him~~] the qualifying broker or

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1 associate broker, which loss arose out of any transaction for
2 which a [~~real estate broker's or salesperson's~~] qualifying
3 broker's or an associate broker's license is required and arose
4 out of or during the course of a transaction involving the
5 sale, lease, exchange or other disposition of real estate,
6 where the cause of action arose on or after July 1, 1980, that
7 person may, within one year after obtaining a final judgment
8 based upon fraud, knowing or willful misrepresentation or
9 wrongful conversion of funds entrusted to [~~him~~] the qualifying
10 broker or associate broker and the termination of all
11 proceedings, including appeals in connection with the judgment,
12 file a verified petition with the commission for payment from
13 the real estate recovery fund for the actual damages included
14 in the judgment and unpaid, but not more than ten thousand
15 dollars (\$10,000) per judgment regardless of the number of
16 persons aggrieved or parcels of real estate involved in the
17 transaction. The aggregate amount recoverable by all claimants
18 for losses caused by any one licensee shall not exceed thirty
19 thousand dollars (\$30,000).

20 B. A copy of the petition shall be served upon the
21 commission in the manner provided by law for service of a civil
22 summons.

23 C. The commission shall conduct a hearing on the
24 petition after service of the petition upon the commission. At
25 the hearing, the petitioner shall be required to show that [~~he~~]

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1 the petitioner:

2 (1) is not the spouse of the judgment debtor,
3 the personal representative of the spouse or related to the
4 third degree of consanguinity or affinity to the licensee whose
5 conduct is alleged to have caused the loss;

6 (2) has complied with all the requirements of
7 the Real Estate Recovery Fund Act;

8 (3) has obtained a judgment of the kind
9 described in Subsection A of this section, the amount awarded
10 and the amount owing at the date of the petition;

11 (4) has had execution issued upon the judgment
12 and that the officer executing the writ has made a return
13 showing that the judgment debtor has no property within the
14 state subject to execution. If execution is levied against the
15 property of the judgment debtor, the petitioner [~~must~~] shall
16 show that the amount realized on the sale was insufficient to
17 satisfy the judgment and [~~must~~] shall set forth the amount
18 realized from the sale and the balance remaining due on the
19 judgment after application of the amount realized;

20 (5) has made reasonable searches and inquiries
21 to ascertain whether the judgment debtor is possessed of real
22 or personal property or other assets liable to be sold or
23 applied in satisfaction of the judgment, including partnership
24 assets, licensee's estate or any bond or insurance, and that
25 [~~he~~] the petitioner has exercised reasonable diligence to

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1 secure payment of the judgment from the assets of the judgment
2 debtor; and

3 (6) has a judgment that is not:

4 (a) covered by any bond, insurance,
5 surety agreement or indemnity agreement;

6 (b) a loss incurred by a partner, joint
7 venturer, employer, employee or associate of the licensee whose
8 conduct is alleged to have caused the loss; or a corporate
9 officer or director of a corporation in which the judgment
10 debtor is also an officer, director or employee; or

11 (c) a loss incurred by any business or
12 other entity in which the licensee whose conduct is alleged to
13 have caused the loss has any interest at the time of the
14 conduct alleged to have caused the loss. "

15 Section 19. Section 61-29-27 NMSA 1978 (being Laws 1980,
16 Chapter 82, Section 8, as amended) is amended to read:

17 "61-29-27. SUBROGATION. -- When the commission makes any
18 payment from the real estate recovery fund to a judgment
19 creditor, the commission shall be subrogated to all rights of
20 the judgment creditor for the amounts paid out of the fund and
21 any amount and interest so recovered by the commission shall be
22 deposited in the fund. The commission may, pursuant to the
23 provisions of the Uniform Licensing Act, revoke, suspend or
24 refuse to renew the license of any [real-estate] qualifying
25 broker or associate broker ~~[or salesperson]~~ for whom payment

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1 from the fund has been made in accordance with the provisions
2 of the Real Estate Recovery Fund Act. Further, the [~~commission~~]
3 commission may refuse to issue or renew the license of any
4 person for whom payment from the real estate recovery fund has
5 been made, until that person reimburses the fund for all
6 payments made on [~~his~~] that person's behalf."

7 Section 20. A new section of Chapter 61, Article 29 NMSA
8 1978 is enacted to read:

9 "[NEW MATERIAL] REAL ESTATE EDUCATION AND TRAINING FUND
10 CREATED--PURPOSE--APPROPRIATION.--

11 A. The "real estate education and training fund" is
12 created in the state treasury. The fund shall consist of an
13 initial transfer of the balance in the real estate recovery
14 fund as provided in Subsection C of this section; legislative
15 appropriations to the fund; fees charged by the commission for
16 approval of real estate education sponsors, courses and
17 instructors; gifts, grants, donations and bequests to the fund;
18 and income from investment of the fund. Money in the fund
19 shall not revert to any other fund at the end of a fiscal year.

20 B. The fund shall be administered by the
21 commission, and money in the fund is appropriated to the
22 commission to improve real estate education and to train real
23 estate instructors. The commission shall promulgate rules
24 specifying the manner in which the fund shall be administered.

25 C. Notwithstanding the provisions of Sections

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1 61-29-21 and 61-29-22 NMSA 1978, on July 1, 2005, the balance
2 in excess of two hundred fifty thousand dollars (\$250,000) in
3 the real estate recovery fund shall be transferred to the real
4 estate education and training fund. "

5 Section 21. EFFECTIVE DATE. --

6 A. The effective date of the provisions of Sections
7 1 through 19 of this act is January 1, 2006.

8 B. The effective date of the provisions of Section
9 20 of this act is July 1, 2005.